IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

APPEAL FROM ORDER NO.937 OF 2005

WITH

CIVIL APPLICATION NO.1102 OF 2005

Neelu Yatin Shah. ....Appellant.

Vs.

Prakash Chawla & Anr. ....Respondents.

.....

Mr.A.Y.Sakhare, Sr.Advocate with Mr.D.R.Shah for the Appellant.

Mr.V.Mannadiar for Respondent No.1.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.

November 30,2005.

P.C. :

In view of the finding of the Learned Trial Judge on the preliminary issue that the suit was not maintainable for want of notice under Section 164 of the Maharashtra Co-operative Societies Act, 1960, Counsel appearing on behalf of the Appellant states that the Appellant while accepting this finding has issued a notice to the Registrar on

19th October 2005. In these circumstances, Counsel seeks the permission of the Court to withdraw the suit with liberty to institute a fresh suit on the same cause of action after the period of notice under Section 164 has expired. This request is not opposed by Counsel appearing on behalf of the Respondents. Short Cause Suit No.449 of 2005 is, in the circumstances, dismissed as withdrawn with liberty to institute a fresh suit on the same cause of action after due compliance of the provisions of Section 164 of the Maharashtra Co-operative Societies Act, 1960. In that view of the matter, without the expression of any opinion by this Court on the merits of the findings of the Learned Trial Judge on the issue of pecuniary jurisdiction, the impugned order dated 1st September 2005 is set aside by consent. The Appeal from Order is accordingly disposed of.

In view of the disposal of the Appeal from Order, the Civil Application does not survive and is accordingly disposed of.

.....